United Postal Service *and* Local 300, American Postal Workers Union, AFL–CIO. Case 7–CA–32350(P)

October 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On July 22, 1992, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Postal Service, Lansing, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] No exceptions were filed to the following findings of the judge: that Supervisor Evalora Johnson's grievance-settlement offer violated Sec. 8(a)(3) and (1) of the Act; that Superintendent Al Crudup's grievance-settlement offer did not violate the Act; and that deferral to arbitration by the Board of the issues in this proceeding would be inappropriate.

Dwight R. Kirksey, Esq., for the General Counsel.
David F. Wightman, Esq., of Birmingham, Michigan, for the United States Postal Service.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. The American Postal Workers Union (APWU) represents a nationwide unit of postal clerks.[1] Sandra Burks worked as a clerk in the Lansing (Michigan) General Mail Facility and, as such, was a member of the unit. In the past Burks had been a union steward, but she held no union position during the period of concern to us here. On March 19, 1991, the Respondent, the United States Postal Service, notified Burks that she was going to be removed from the Postal Service because, according to the Postal Service, Burks had tried to obtain leave-time by submitting ''falsified'' documents. Burks grieved the Postal Service's action. In the course of the grievance process:

1. Burks' immediate supervisor offered to change the removal to a 21-day suspension if Burks would agree not to hold any union office or to serve as a union steward.

2. At the next step in the grievance process another supervisor changed the proposed settlement terms—the no-union-office condition would be eliminated but the suspension would be 30 days, not 21.

3. Burks' steward asked for information about discipline meted out by the Postal Service to two supervisors at the Lansing facility who, the steward had heard, had also been charged by the Postal Service with falsifying documents for their own benefit. The Postal Service refused to provide the information.

APWU Local 300 filed its charge on September 20, 1991. The complaint issued on October 31, 1991, alleging that the Postal Service's two settlement offers violated Section 8(a)(3) and 8(a)(1) of the Act and that the Postal Service's refusal to provide information violated Section 8(a)(5) and 8(a)(1) of the Act.[2] I heard the case in Lansing on February 5, 1992. The General Counsel and the Postal Service have filed briefs.[3]

I. THE STATUS OF LOCAL 300

The Postal Service points out that the APWU is the designated collective-bargaining representative of the Lansing facility's postal clerks, not Local 300 and, additionally, in its answer denied that Local 300 is a ''labor organization'' within the meaning of Section 2(5) of the Act. As a result, continues the Postal Service, Local 300 had no standing to file the unfair labor practice charge that instituted this proceeding, particularly in respect to the Section 8(a)(5) facet of the charge. (Br. 9–11, Tr. 13–14.)

As respects Local 300's labor organization status, the record is clear that Local 300 is (quoting from Sec. 2(5)) an ''organization . . . in which employees participate and which exists for the purpose . . . of dealing with'' an employer, the Postal Service, concerning, inter alia, ''grievances'' and ''conditions of employment.'' Moreover the Postal Service agrees that Local 300 ''represents employees for at least some purposes'' (Tr. 13), and the Postal Service has so dealt with Local 300. (See G.C. Exh. 4.) I accordingly find and conclude that APWU Local 300 is a labor organization within the meaning of Section 2(5) of the Act.

As for Local 300's standing to file unfair labor practice charges, ''[t]he simple fact is that anyone for any reason may file charges with the Board.'' *Operating Engineers Local 39 (Kaiser Foundation)*, 268 NLRB 115, 116 (1983), enfd. 746 F.2d 530 (9th Cir. 1984); accord, *M. J. Santulli Mail Serv-*

[1] The unit:

All full-time and regular part-time clerks employed by the Postal Service at various facilities throughout the United States; but excluding letter carriers, motor vehicle employees, special delivery messengers, maintenance employees, Postal Inspection Service employees, professional employees, supplemental work force (casual) employees, managerial employees, employees engaged in personnel work, guards as defined in Public Law 91–375, 1202(2), and supervisors as defined in the National Labor Relations Act.

The Postal Service admits the unit definition and that the unit is an appropriate unit for the purpose of collective bargaining within meaning of Sec. 9(b) of the National Labor Relations Act (the Act).

[2] The Postal Service admits that it is subject to the jurisdiction of the Board in the matters here at issue and admits that the APWU is a labor organization within the meaning of the Act.

[3] The Postal Service filed its brief with the Chief Administrative Law Judge late even though it had served its brief on the General Counsel in timely fashion. See my notice dated June 12, 1992. I accept the Postal Service's brief notwithstanding its late filing.

ices, 291 NLRB 1288, 1296 (1986). Even were that not the case, moreover, a union that is the bargaining representative of a unit of employees may lawfully delegate authority to another union. See *Kodiak Island Hospital*, 244 NLRB 929 (1979). The APWU has done that with respect to ''its affiliated Local Unions,'' specifically including in such delegation the ''processing of grievances'' and ''[f]iling unfair labor practice charges on any issue.'' Letter dated July 22, 1991, from Moe Biller, president APWU, to Sherry A. Cagnolli, assistant postmaster general (G.C. Exh. 3). Local 300, in turn, is an affiliated ''Area Local'' of the APWU (G.C. Exh. 2).

II. CONDITIONING CONTINUED EMPLOYMENT ON AN AGREEMENT NOT TO HOLD UNION OFFICE

The settlement of grievances at the Lansing facility sometimes results in documents being issued by joint union-management teams which documents authorize specified employees to take specified amounts of leave. The employees have taken to calling these documents ''get-out-of-jail-free tickets.'' (The employees must use their accrued paid leave to take advantage of get-out-of-jail-free tickets or take unpaid leave. The advantage of the tickets is that they sometimes enable employees to take leave at times when their supervisors would otherwise disapprove of their leave requests.)

Employee Sandra Burks used two get-out-of-jail-free tickets to take 11-1/2 hours leave. The Postal Service learned that the tickets that Burks used had not, as originally created, contained Burks' name. The tickets that Burks used, that is to say, had been covertly altered to include her name. The Postal Service concluded that Burks was the person who falsified the tickets and determined to fire her. That led the Postal Service to issue a notice of removal against Burks.[4]

Burks grieved the notice of removal. In accordance with the usual first step of the grievance process, Burks' steward, Deborah Walker, met with Burks' immediate supervisor, Evalora Johnson. (The Postal Service admits that Johnson is a supervisor for purposes of the Act and an agent of the Postal Service.) Johnson offered to reduce the notice of removal to a 21-day suspension and then went on to say that, as part of the settlement, Burks could ''have no active involvement in the union.'' Walker immediately protested. Johnson responded: ''Well, okay, but she [Burks] can't be a steward or an officer.'' Walker again protested, and when Walker told Burks of the offer, Burks rejected it.

The Walker-Johnson meeting constituted step 1 of the grievance process. At the Lansing facility the next grievance step is step 1A. At step 1A, Burks again was represented by Walker. The Postal Service was represented by Burks' ''tour'' (i.e. shift) superintendent, Al Crudup. (The Postal Service admits that Crudup is a supervisor for purposes of the Act and an agent of the Postal Service.) An officer of Local 300, Jeffrey Sweet, also participated in the discussion. After some preliminary conversation, Crudup said that while he believed that Burks deserved to be removed, and while he was confident the Postal Service could justify removal if the case went to arbitration, he was ''going to be a nice guy about it'' and agree to settle the grievance by reducing the removal to a 30-day suspension.[5] But that suspension, Crudup continued, would remain in Burks' record for 2 years. Sweet responded that Johnson ''was going to give her [Burks] less; why do you want to give her 30?''

Crudup, who had not yet gotten the paperwork from Johnson concerning the step 1 proceedings, asked about Johnson's proposal. When Sweet and Walker described it to him, Crudup responded: ''that was not appropriate,'' referring to the no-union-office condition that Johnson had proposed. (Until the hearing that was the only statement by an agent of the Postal Service that in any way could be said to have repudiated Johnson's proposed settlement condition.) Crudup then went on: ''Well, irregardless of what [Johnson] was going to give'' Burks, he was not willing to give her anything less than 30 days' suspension ''and two years in her record.'' When Walker spoke about the hardship Crudup's proposed conditions would cause Burks, Crudup responded that ''if you expected anything better than a 30-day [suspension], you should have taken [Johnson's] offer.''

Burks rejected Crudup's offer. The Postal Service subsequently terminated Burks' employment in accordance with the removal notice.

The Postal Service's Grievance Settlement Offers—Conclusion

The Act protects the right of employees to be represented by persons of their own choice. *Syncon Corp*., 258 NLRB 1159 (1981). The Act similarly protects the right of employees to hold union office. *Barton Brands*, 298 NLRB 976 (1990). The Postal Service interfered with these rights when its agent, Johnson, proposed to suspend Burks, rather than fire her, only if Burks would agree not to hold union office. The Postal Service thereby violated Section 8(a)(3) and (1) of the Act. Id., *Syncon Corp*., supra.[6]

The Postal Service points out that Burks rejected Johnson's grievance settlement proposal, that neither Burks nor her union representatives made any counterproposal (as in proposing, for instance, a 21-day suspension without the no-union-office condition), and that Crudup told Walker and Sweet that Johnson's proposed condition was ''not appropriate.'' ''As a result,'' the Postal Service argues, ''it would not effectuate the purposes of the Act to find a violation in this single isolated instance of a rejected offer which was never repeated in the grievance/arbitration process.'' (Br. at 12–13.)

But the Board rarely dismisses a proven violation of employee rights as de minimis. See, e.g., *Servomation Corp*., 248 NLRB 106 (1980). That is particularly the case where an employer has engaged in the ''egregious conduct'' of seeking to prevent an employee from holding union office. *Vulcan Hart Corp*., 262 NLRB 167 (1982).

As for Crudup's remark to Walker about Johnson's proposed condition not being appropriate, it did not constitute an assurance ''to employees that in the future their employer

[4] The General Counsel does not contend that the Postal Service's removal action against Burks violated the Act.

[5] Crudup did not testify. My recounting of his statements is taken from the testimony of witnesses Walker and Sweet.

[6] Johnson did not testify. Thus we do not know the reasoning that led her to propose the no-union-office condition. In any event, nothing in the record even suggests that there might be ''compelling evidence of legitimate considerations'' (in the words of *Syncon Corp*.) for the imposition of such a condition.

will not interfere with the exercise of their Section 7 rights.'' *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Thus the Postal Service's actions subsequent to the Johnson proposal were ''ineffective to relieve Respondent of liability and to obviate the need for further remedial action.'' Id.

The General Counsel also contends that Crudup's 30-day-suspension proposal violated Section 8(a)(3) and 8(a)(1) of the Act. According to the General Counsel, ''a valid inference can be made'' that the reason the Postal Service increased the duration of its offer of suspension at step 1A was—

> to compensate for removing the illegal conditions to the twenty-one day suspension offer made by Johnson. This inference is further supported by Crudup's step 1A meeting statement that if the Union expected Respondent to offer anything better than a thirty day suspension it should have taken Johnson's step 1 offer. Thus, the message Respondent gives to the Union and Burks is that if Burks had agreed to give up holding union office she could have resolved her termination with a twenty-one day suspension, but since she did not agree Respondent dropped the ''inappropriate'' conditions but upped the ante to a more severe 30 day suspension. [Br. at 5.]

I conclude that Crudup's offer of a 30-day suspension did not violate the Act in any respect.

To begin with, the evidence falls far short of proving that Crudup demanded a 30-day suspension because Burks rejected Johnson's proposed condition. Rather, as I add up the facts of record, they show that Crudup proposed the 30-day suspension solely because he thought that, given the nature of Burks' offense (as Crudup saw it), a 30-day suspension was the minimum that Burks deserved.

That is not the end of the matter because the Postal Service violated Section 8(a)(1) if Crudup's offer and related remarks were such that they ''tend[ed] to interfere with the free exercise of employee rights under the Act,'' whether or not in the particular case at hand they actually had that effect and however innocent Crudup's motives. *American Freightways Co.*, 124 NLRB 146, 147 (1959). But my conclusion is that, under all the circumstances associated with Crudup's grievance settlement proposal, Crudup's statements could not reasonably have led employees to believe that the reason Crudup proposed a 30-day suspension, instead of the 21 days that Johnson had proposed, was because Burks had rejected the no-union-office conditions of Johnson's offer.

III. THE POSTAL SERVICE'S REFUSAL TO PROVIDE INFORMATION

Walker (Burks' steward) had heard that the Postal Service had disciplined, but not fired, two supervisors at the Lansing facility for falsifying documents. According to Walker's credible testimony, in fact, ''it was common knowledge on the work room floor'' that one supervisor had been disciplined for ''jockeying . . . figures around to make it look like [he was] more productive'' than he actually was, while the other supervisor had been disciplined for falsifying leave documents.

Walker concluded that, if the facts concerning the discipline of those two supervisors were as the Union believed them to be, those facts could offer support in the grievance process for the contention that the Postal Service was unduly harsh in firing Burks for her alleged falsification of documents. Accordingly, on April 17, 1991, Walker submitted a form to the management of the Lansing facility entitled ''request for information/documents relative to processing a grievance . . . .'' The form asked management to permit Local 300 to ''review and copy [pertinent] information from the OPF [official personnel folders] and discipline files'' of two named supervisors. The form specified that the Union wanted the information ''for the purpose of comparison of disciplinary action'' in respect to the Postal Service's termination of Burks.

It is worth noting that: (1) on the one hand, neither of the supervisors about whom Walker requested documents was in the same immediate chain of command as Burks, Johnson, or Crudup (they worked on different shifts); and (2) on the other hand, the parts of the Postal Service's Employee and Labor Relations Manual which the Postal Service had charged Burks with violating are applicable to supervisors as well as to bargaining unit employees.

The Postal Service denied the request with the nine-word explanation: ''individual excluded by Article 1, Section 2, National Agreement.''[7] That is, the two supervisors concerning whom the Union sought information were not members of the bargaining unit.

Local 300 grieved the Postal Service's refusal to provide the information, proceeding through steps 1, 1A, and 2, with the Union continuing to explain why it wanted the information and management continuing to refuse to provide it. Management's most detailed explanation of its position was its step 2 decision. That explanation reads, in part:

> Management believes that the issue of whether or not the Union is entitled to access to discipline records on supervisors is interpretive in nature. It is not appropriate to attempt to use discipline of supervisors for comparison purposes. Article 1.2 excludes non-bargaining unit employees from the coverage under the National Agreement. Discipline for bargaining unit employees [is] controlled by the just cause standard of Article 16.1 of the National Agreement and no such standard has been negotiated for non-bargaining unit employees. Action or non-action against supervisors is a matter totally outside the National Agreement and within managerial discretion, and cannot be utilized to provide a basis for a disparate treatment argument. Such an argument must pertain to bargaining unit employees only who are covered by the same just cause standard. To release the information requested by the Union would be a violation of the privacy of the supervisor.

My recommendation is that, for the reasons stated in *Postal Service*, 307 NLRB 429 (1992), the Board find that the Postal Service violated the Act by failing to provide the re-

[7] The ''National Agreement'' refers, of course, to the collective-bargaining agreement between the Postal Service and the APWU. The collective-bargaining agreement of record covers the period July 21, 1987, through November 20, 1990. Jt. Exh. 1. But the parties have stipulated that ''the provisions'' of that agreement ''were still in effect at the time . . . the actions that are involved in this case occurred.''

quested information. (I will hereafter refer to that decision as the ''*April '92 Postal Service*'' decision.)

Little need be said beyond referring to the *April '92 Postal Service* case. There, as here: (1) an employee was fired for violating Postal Service regulations; (2) the union grieved the employee's dismissal; (3) the regulations cited by the Postal Service in firing the employee applied to supervisors as well as employees; (4) the union had information (which the Postal Service did not claim to be without foundation) that a supervisor who had violated the same regulations had not been fired; (5) the union requested information about the Postal Service's discipline of the supervisor, arguing that it appeared to be relevant to the processing of the grievance; and (6) the Postal Service refused to provide the information, claiming that it was irrelevant to the grievance and confidential. The Board held that, by refusing to provide the information, the Postal Service violated Section 8(a)(5) and (1) of the Act.

For two other similar cases see *NLRB v. Postal Service*, 888 F.2d 1568 (11th Cir. 1989); and *Postal Service*, 301 NLRB 709 (1991).[8]

I would only note that, as respects the Postal Service's concerns about confidentiality, there is an utter absence of evidence that: the Postal Service ever promised its supervisors that their disciplinary records would be kept confidential; or that the requested disciplinary information is inextricably tied to other information of a particularly sensitive nature; or that providing the kinds of information the Union here seeks would be detrimental to the efficiency of the Postal Service; or even that the supervisors in question requested confidential treatment of the documents sought by the Union. I would also note that the Postal Service at no time sought to bargain with the Union about ways of providing the requested data that would result in the minimum disclosure necessary while taking into account the Union's needs. (Compare *Whisper Soft Mills*, 267 NLRB 813, 830–832 (1983).)

IV. THE ISSUE OF DEFERRAL TO ARBITRATION

The Postal Service's answer (but not its brief) contends that the Board should defer all of the issues in this proceeding to arbitration. In the words of the answer:

> Inasmuch as the union has voluntarily submitted the disputes over the condition to Evalora Johnson's settlement offer and the refusal to provide the requested supervisors' discipline record to the grievance/arbitration procedure, these charges should be deferred pursuant to *Dubo Manufacturing Corporation* . . . .

Turning first to the 8(a)(3) part of this case—the part having to do with Johnson offering Burks a 21-day suspension subject to Burks' agreement to refrain from holding union office—the Union grieved the Postal Service's firing of Burks, not Johnson's settlement offer. Moreover: (1) there would appear to be no contractual issue available for consideration by an arbitrator that would be factually parallel to the question of whether Johnson's proposed no-union-office condition violated the Act; and (2) even if the arbitrator did focus on Johnson's proposed condition and found it to be improper under the collective-bargaining agreement, it is unclear what remedy the arbitrator could impose. Thus deferral of the 8(a)(3) part of this proceeding would be inappropriate. See *Iron Workers Pacific Northwest Council (Hoffman Construction)*, 292 NLRB 562 (1989); *Aces Mechanical Corp*., 282 NLRB 928 (1987), enf. denied 837 F.2d 570 (2d Cir. 1988).

As for the request-for-information aspect of this case, '''issues concerning a refusal to supply information are not subject to deferral to the grievance-arbitration process.''' *April '92 Postal Service*, quoting *Postal Service*, 302 NLRB 918 (1991).[9]

REMEDY

Having found that the Postal Service violated Section 8(a)(1), (3), and (5) in certain respects, I shall recommend that the Postal Service be ordered to cease and desist therefrom and that it be required to take certain affirmative action necessary to effectuate the policies of the Act.

I recommend that that affirmative action include providing to representatives of Local 300 at the Lansing facility the documents requested in the Union's April 17, 1991 request for information to the extent that such documents relate to the falsification of documents or the submission of false documents.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, the United States Postal Service, Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Where the Postal Service has issued a notice of removal to an employee, proposing to settle a grievance stemming from such notice by offering a suspension in place of the removal coupled with the condition that the employee be precluded from holding union office.

[8] The Postal Service argues here, as it has in previous cases, that the Privacy Act, 5 U.S.C. § 552a, prohibits disclosure of the information sought by Local 300. (Br. at 13–23.) But as the Postal Service recognizes, that theory has been repeatedly rejected. See, e.g., the *April '92 Postal Service* case.

[9] The record here includes the decision of an arbitrator, Professor Carlton J. Snow, concerning the disclosability of supervisors' disciplinary records. The arbitrator's decision stemmed from the proposed removal of a letter carrier for, inter alia, falsifying an official report of an on-duty vehicle accident. The union grieved the removal, and while the grievance was being processed the union requested information and documents about recent discipline issued to two supervisors who allegedly had falsified postal records. The Postal Service refused to provide the information, the union grieved the refusal, and the matter proceeded to arbitration. On July 29, 1991, the arbitrator issued his award in which he concluded that the Postal Service violated its collective-bargaining agreement with the union by failing to provide the information. On the other hand, the *April '92 Postal Service* case quotes the decision of another arbitrator which holds that '''nothing within the National Agreement requires the release of materials concerning administrative or disciplinary action taken against supervisors.'''

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Refusing to bargain collectively with the American Postal Workers Union, AFL–CIO (the APWU), as the exclusive representative of the employees in the unit set out below, or APWU Local 300 as the APWU's designee, by refusing to furnish the documents specified in the remedy section of the decision on the request of the APWU or Local 300. The unit is as follows:

> All full-time and regular part-time clerks employed by the Postal Service at various facilities throughout the United States; but excluding letter carriers, motor vehicle employees, special delivery messengers, maintenance employees, Postal Inspection Service employees, professional employees, supplemental work force (casual) employees, managerial employees, employees engaged in personnel work, guards as defined in Public Law 91–375, 1202(2), and supervisors as defined in the National Labor Relations Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the APWU or Local 300, provide the documents specified in the remedy section of the decision.

(b) Post at its facility in Lansing, Michigan, copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Where we have issued a notice of removal to an employee, WE WILL NOT propose to settle a grievance stemming from such notice by offering a suspension in place of the removal coupled with the condition that the employee be prohibited from holding union office.

WE WILL NOT refuse to bargain collectively with your union by refusing to provide documents from the OPF or disciplinary files of supervisors relating to our discipline of such supervisors if there is a reasonable probability that the information in those documents are relevant to your union in determining whether to file a grievance, pursue a grievance, or take other action to assure the contractual rights of employees.

At the request of your union, WE WILL provide the union with the documents the union requested from the OPF and disciplinary files of supervisors in connection with the union's grievance of our removal of Sandra Burks.

UNITED STATES POSTAL SERVICE